

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>GERALD PARRICK</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 192,367
<b>CITY OF JUNCTION CITY</b>	)	
Respondent	)	
Self-Insured	)	
AND	)	
	)	
<b>KANSAS WORKERS COMPENSATION FUND</b>	)	

**ORDER**

Claimant appeals from an Award entered by Assistant Director Brad E. Avery on June 17, 1996. The Appeals Board heard oral argument December 5, 1996.

**APPEARANCES**

Claimant appeared by his attorney, John M. Ostrowski of Topeka, Kansas. Respondent appeared by its attorney, Bart E. Eisfelder of Kansas City, Missouri. The Kansas Workers Compensation Fund appeared by its attorney, Dortha O. Bird of Topeka, Kansas.

**RECORD AND STIPULATIONS**

The Appeals Board has reviewed and considered the record listed in the Award. The Appeals Board adopted the stipulations listed in the Award.

### ISSUES

Claimant seeks benefits for stipulated permanent total disability resulting from a stroke. Respondent argues that claimant's stroke did not arise out of and in the course of his employment. This is the sole issue on appeal.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments made by the parties the Appeals Board finds and concludes that claimant has failed to meet his burden of proving his injuries arose out of and in the course of his employment. The decision by the Assistant Director should, therefore, be affirmed.

Claimant, Gerald Parrick, suffered a stroke while in the course of his employment at Junction City Fire Department on April 17, 1993. Claimant contends and has produced expert medical testimony indicating that the stroke was caused in substantial part by the fact that claimant did not take a blood pressure medication, Procardia, on the day of the stroke. Claimant asserts that the "heart amendment" found in K.S.A. 44-501(e) does not apply because the claimant is relying on factors other than exertion as a cause of the stroke. See, Dial v. C.V. Dome Co., 213 Kan. 262, 515 P.2d 1046 (1973). According to claimant the only issue is, therefore, whether the stroke arose out of and in the course of his employment. Claimant finds a connection between the stroke and claimant's employment in a company policy which prohibited claimant from taking the Procardia while on duty.

Respondent first argues that the "heart amendment" does apply. Respondent further argued that, for several reasons, the claim should not be considered compensable even if the "heart amendment" does not apply. Respondent contends that the policy did not prohibit taking a medication, the policy only required prior approval before taking a medication while on duty. In addition, respondent contends that claimant failed to prove that the stroke was caused by the fact that claimant did not take Procardia on the day in question.

The Appeals Board agrees that the claimant has failed to prove by a preponderance of the credible evidence that his decision not to take Procardia the day in question was a substantial cause of his stroke. The Appeals Board finds it unnecessary to either accept or reject claimant's legal theory.

The Appeals Board finds claimant's evidence deficient on two levels. First, claimant's theory assumes an elevation in blood pressure which the Procardia would have prevented. The evidence indicates, however, that claimant does not suffer from hypertension. Claimant took the Procardia medication for Raynaud's. Although there is evidence that, on occasion, his blood pressure exceeded normal and he may have had episodes of high blood pressure, there is no evidence that the blood pressure was elevated

on the day in question. In addition, the Appeals Board finds convincing Dr. James Davia's opinion that one cannot say that a surge in blood pressure will cause a fracture of the plaque and set in motion the factors leading to the stroke. Dr. Davia testifies that this is one theoretical possibility that has been considered. However, it is only a theoretical possibility, not one established as a factor causing stroke. For this reason the Appeals Board concludes the evidence does not convincingly establish that the failure to take Procardia on the day in question is a substantial cause of claimant's stroke. The Appeals Board, therefore, finds claimant has failed to establish that the stroke arose out of and in the course of his employment.

**AWARD**

**WHEREFORE**, the Appeals Board finds that the Award of Assistant Director Brad E. Avery dated June 17, 1996, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: John M. Ostrowski, Topeka, KS  
Jan L. Fisher, Topeka, KS  
Bart E. Eisfelder, Kansas City, MO  
Dortha O. Bird, Topeka, KS  
Bryce D. Benedict, Administrative Law Judge  
Brad E. Avery, Assistant Director  
Philip S. Harness, Director